

E-132, 299/SA-90-605 DENYING PETITION AND ESTABLISHING TIME LIMIT FOR COMPLIANCE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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| Darrel L. Peterson   | Chair        |
| Cynthia A. Kitlinski | Commissioner |
| Norma McKanna        | Commissioner |
| Robert J. O'Keefe    | Commissioner |
| Patrice Vick         | Commissioner |

In the Matter of a Petition by the City of Rochester, Minnesota, to Provide Interim Service to the Victory Baptist Church and Newly Platted Areas Known as Hunter Hills Second and Lincolnshire Fourth Subdivisions within the City of Rochester

ISSUE DATE: October 10, 1990

DOCKET NO. E-132, 299/SA-90-605

ORDER DENYING PETITION AND  
ESTABLISHING TIME LIMIT FOR  
COMPLIANCE

PROCEDURAL HISTORY

On September 29, 1988, People's Cooperative Power Association, Inc. (People's) filed a complaint with the Commission alleging that the City of Rochester (City) was constructing electric distribution facilities within People's exclusive assigned service territory. Docket No. E-132, 299/SA-88-660. People's complained that the City was constructing electric facilities to reach the proposed Victory Baptist Church (the Church) building site before the area was officially annexed by the City.

On October 28, 1988, the Commission issued its ORDER FINDING CONDUCT IN VIOLATION OF LAW AND REFERRING MATTER TO THE ATTORNEY GENERAL AND ASSIGNING INTERIM SERVICE RIGHTS. In this Order, the Commission found that the City had violated People's service area. The Commission assigned interim service rights to the City of Rochester upon completion of the annexation process.

On October 18, 1989, the Minnesota Court of Appeals reversed and remanded the Commission's decision, stating that a contested case hearing was required before displacing an assigned utility from its exclusive service territory when material facts were in dispute. In the Matter of a Complaint of People's Cooperative Power Association, Inc. Against the City of Rochester, 447 N.W. 2d 11 (Minn. App. 1989).

On April 25, 1990, the Commission issued its ORDER AFTER REMAND. In this Order the Commission found that the Church building site had been receiving service from People's at the time of City annexation, and that the City had violated People's service area in constructing a line. The Commission ordered the City to cease and desist from providing service to the customer, and to coordinate with People's for an orderly transfer of service. The Commission further found the City

in violation of the service area statutes and referred the matter to the Office of the Attorney General (OAG) for possible penalties.

On June 4, 1990, the Commission issued its ORDER DENYING PETITION FOR RECONSIDERATION OF ORDER AFTER REMAND. No party appealed this Order.

On August 16, 1990, the City of Rochester filed a petition in the current docket, requesting interim service to the Church site and also to two newly annexed and platted areas known as Hunter Hills Second and Lincolnshire Fourth Subdivisions (the Subdivisions).

On August 30, 1990, People's filed an Answer to the City's petition.

On September 17, 1990, the Department of Public Service (the Department) filed responsive comments.

The Commission met to consider this matter on October 9, 1990.

## FINDINGS AND CONCLUSIONS

### GOVERNING STATUTE

This matter is governed by Minn. Stat. § 216B.44 (1988). This statute provides that when a municipality which owns and operates a public utility extends its boundaries through annexation or consolidation, or extends its service territory within its existing boundaries, the municipality shall thereafter provide electric service to these areas unless the areas are already receiving service from an electric utility. If this is so, the municipality may purchase the facilities of the electric utility currently serving the area.

Minn. Stat. § 216B.44 (1988) sets guidelines for the purchase and sale of the facilities. If the municipality and the utility cannot agree on a purchase price, the statute provides that either party can petition the Commission to determine the appropriate terms for the sale. The statute lists factors for the Commission to consider in making its determination.

The annexation statute then states:

Until the determination by the commission, the facilities shall remain in place and service to the public shall be maintained by the owner. However, the electric utility being displaced, serving the annexed area, shall not extend service to any additional point of delivery within the annexed area if the commission, after notice and hearing, with due consideration of any unnecessary duplication of facilities, shall determine that the extension is not in the public interest.

## **THE POSITION OF THE CITY OF ROCHESTER**

The City states that it is currently serving the Church and has distribution facilities near the Subdivisions. The City of Rochester argues that under these circumstances it would be in the public interest for the City to serve the Church and the Subdivisions, and the City should ordinarily be granted interim service rights.

According to the City, the types of standard cable used by the City and People's are not compatible. While the City acknowledges that one type of cable can be energized by means of the other, modifications would be necessary if the two types were used together. Extra expense would be incurred by the City if it were later forced to adapt the cable laid by People's in these areas.

The City also argues that it would incur extra integration expense if People's were granted interim service rights. These extra expenses would arise from the necessity of eventually integrating the distribution facilities installed by People's into the City's system.

While maintaining the validity of these arguments for all the annexed areas, the City has acknowledged that public interest arguments for the Subdivisions are moot. Since the City filed its interim service petition, People's has extended service into the Subdivisions. The City has therefore dropped its allegation that cost savings would occur if the City were granted interim service rights in the Subdivisions. Rochester still maintains, however, that it is in the public interest for the City to be granted interim rights for the Church site.

## **THE POSITION OF PEOPLE'S**

People's argues that there is little if any problem with compatibility between the two types of cable. According to People's, both entities stock several types of cable and cooperation between the parties would avoid any incompatibility problems.

People's also disagrees with the City's argument regarding extra integration expense. People's argues that service in the relevant areas could easily be turned over from People's to the City, once the issues of service and compensation have been finally determined.

According to People's, the City has not proved its case under Minn. Stat. § 216B. 44 (1988): "...that the extension [by People's into the annexed area] is not in the public interest."

## **THE DEPARTMENT RECOMMENDATION**

In its comments, the Department stated that there are no material facts in dispute. The Department found no problems with incompatibility or duplication of facilities if People's were granted interim service rights. The Department noted that the Commission has previously denied the City interim service rights under similar sets of facts. The Department recommended that the Commission deny the City's petition.

### **THE COMMISSION'S ACTION REGARDING THE SUBDIVISIONS**

All parties have stated that there are no material facts in dispute in this matter, and therefore no need for a contested case proceeding.

The Commission finds that it is in the public interest to deny the City's petition regarding the Subdivisions. Because the Subdivisions are currently in People's service area, and parties in these areas have requested service, People's has extended facilities into the annexed territory. No cost savings would be realized by the City if it were granted interim rights prior to final determination. The City has acknowledged that its public interest arguments are now moot regarding the Subdivisions. The Commission will deny the City's petition regarding interim rights in the Subdivisions.

### **THE COMMISSION'S ACTION REGARDING VICTORY BAPTIST CHURCH**

Again, the parties are in agreement that there are no material facts in dispute.

The Commission agrees with the Department that the City has failed to make the necessary showing under Minn. Stat. § 216B.44 (1988). The City has not proven to the Commission's satisfaction that People's cannot provide adequate service to the Church, that the cost of extending or providing that service is unreasonable, or that facilities will be duplicated if People's serves the Church. The Commission finds that the City's request to provide interim service to the Church should be denied, and that People's should be allowed interim rights until compensation is determined and paid.

### **FURTHER ACTION BY THE OAG**

Counsel for the City has stressed to the Commission that a new era of cooperation is dawning. The Commission fervently hopes that this is the case. At the same time, the Commission notes that since April 25, 1990, the City has been under a specific order from the Commission to cease and desist service to the Church. To this date, the City is still serving Victory Baptist Church. The City has therefore intentionally and continually violated the Commission's April 25, 1990 Order.

The Commission will allow the City until October 13, 1990 to comply in every respect with the Commission's April 25 Order. By the end of the day on October 13, 1990, the City should have disconnected its service to Victory Baptist Church, and facilitated the connection of service by People's. If the City has not complied with this Order by that date, the matter will be referred to the Office of the Attorney General for possible penalty proceedings.

### **ORDER**

1. The August 16, 1990 petition of the City of Rochester for interim service rights is denied.
2. On or before October 13, 1990, the City of Rochester shall disconnect service to Victory Baptist Church and facilitate connection of service by People's Cooperative Power Association, Inc.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)